



August 7, 2000

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2000-2983

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137755.

The Texas Department of Criminal Justice (the "department") received a request for several types of information regarding a specified inmate. Specifically, the requestor seeks: 1) the written report stating the nature and seriousness of each offense; 2) a copy of the victim impact statement; 3) a copy of the record of arrest for each offense; 4) information regarding the criminal history of the defendant; 5) a copy of the pre-sentence or post-sentence investigation report; 6) an employment history; 7) a social history; and 8) timesheets and any other information contained in the department's files. You explain that the requestor has since withdrawn request-item number 8. You claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.107, and 552.131 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

As a preliminary matter, we note that the requestor here is an attorney representing the inmate who is the subject of the request. Section 552.028(a)(2) of the Government Code requires the department to "accept or comply with a request for information" from an inmate's attorney, "when the attorney is requesting information that is subject to disclosure under this chapter." This provision, however, does not provide the attorney with any greater right of access to information than any other member of the public.

Section 552.131(a) relating to department inmates states in pertinent part:

¹You state that the department intends to release some information to the requestor. While it is unclear to us exactly which information the department intends to provide to the requestor, we understand you to object to release of information responsive to request-items 1 through 7.

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

(b) Subsection (a) does not apply to:

(1) statistical or other aggregated information relating to inmates confined in one or more facilities operated by or under a contract with the department; or

(2) information about an inmate sentenced to death.

We find that the submitted information is about an inmate who is confined in a facility operated by the department. Moreover, subsection (b) of section 552.131 does not apply to the submitted information. Finally, section 552.029 does not apply to the submitted information.² Therefore, the department must withhold the information under section 552.131.

The requestor suggests that the information at issue should be released to him in his capacity as his client's authorized representative under section 552.023 of the Government Code. Section 552.023 provides in pertinent part:

(a) A person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests.

(b) A governmental body may not deny access to information to the person, or the person's representative, to whom the information relates on the grounds that the information is considered confidential by privacy principles under this chapter but may assert as grounds for denial of access other provisions of this chapter or other law that are not intended to protect the person's privacy interests.

Although we agree that one of the purposes of section 552.131 is to protect inmates' privacy interests, we believe that this section also protects certain law enforcement interests of the department, *i.e.*, to prevent one prisoner from obtaining information about the other prisoner

²Section 552.029 lists eight specific types of information about a department inmate that must be released. In this instance, section 552.029 is not triggered due to the nature of the request and the content of the responsive information.

and thereby gaining power or an advantage over that prisoner. An individual's right of access to private information under section 552.023 does not override exceptions to disclosure in the Public Information Act protecting some interest other than that individual's privacy. *See* Open Records Decision Nos. 587 (1991), 556 (1990). We conclude, therefore, that the requestor does not have a special right of access to information excepted from public disclosure under section 552.131, despite the fact that he is acting as his client's authorized representative. Therefore, the department must withhold the submitted information under section 552.131.³

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

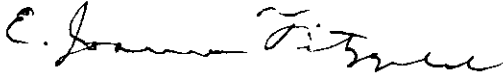
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

³Because section 552.131 is dispositive of this matter, we do not address your other arguments for withholding the submitted information.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "E. Joanna Fitzgerald".

E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\lp

Ref: ID# 137395

Encl: Submitted documents

cc: Mr. Gary Cohen
Attorney at Law
1307 West Avenue
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(w/o enclosures)